IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 528 of 1995

For Signature:

Hon'ble MR.JUSTICE A.L.DAVE
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORBHAI SOMABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 528 of 1995

MR J.M. BUDHBHATTI FOR MR YN OZA for Appellant No. 1-3

MR AJ DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This appeal arises out of a judgment and order rendered by learned Additional Sessions Judge, Bharuch, in Sessions Case No.67 of 1994, on March 9, 1995, recording conviction of the appellants for offences punishable under Sections 302 read with Section 34, 323 and 324 read with Section 34 of Indian Penal Code and sentencing them to undergo imprisonment for life for offence punishable under Section 302 read with Section 34 of I.P.C. The appellants had also preferred Criminal Appeal No.495 of 1995, which came to be disposed of by this Court on October 21, 1995, by saying "No order".

2. Appellants No.1 and 2 were refused bail at the time of admission whereas appellant No.3-Balwantbhai Babhabhai Patel was admitted to bail upon certain conditions.

3. The facts leading to the present appeal can be stated thus:-

3.1 The appellants along with Niruben, wife of Thakorebhai Somabhai Prajapati (appellant No.1) came to be tried by the Sessions Court. The case of the prosecution against them was that, on November 30, 1993, at about 9.00 P.M., when Gulamhussain Chhotebapu Ansari, Sagir Ahmed Ansari, Gyasuddin Ahmed Ansari and Kitabuddin Ansari were sitting on the Otta of their House situate at Tad Falia of Ankleshwar, District Bharuch, appellants No.1, 2 and 3 arrived there. They were drunk. They started flinging filthy abuses in the name of mother and sister of Sagir Ahmed Ansari. Sagir Ahmed Ansari and Gyasuddin Ahmed Ansari asked them not give abuses. Appellant No.1-Thakorebhai Prajapati, therefore, inflicted a knife blow in the abdomen of Sagir Ahmed Ansari. He inflicted another blow on the left side of the head. As a result of the said injuries, Sagir Ahmed, ultimately, died. In the same transaction, when Gyasuddin Ansari and Kitabuddin Ansari intervened to rescue Sagir Ahmed Ansari, appellant No.3 caught hold of Gyasuddin and appellant No.2 inflicted a blow on the head of Gyasuddin with an axe, as a result of which Gyasuddin sustained injury on his head. It is also the case of the prosecution that all the accused persons were flinging abuses and had intimidated the witnesses while leaving the place after the assault. The accused persons were charged to have committed breach of the notification under the Bombay Police Act. After the incident, the assailants ran away. Sagir Ahmed was carried to Dr. Patel's hospital at Anklshwar and was advised to be taken to Civil Hospital, Bharuch. He was taken to Civil Hospital, Bharuch, in an auto-rickshaw, where, after

examining, the Medical Officer declared Sagir Ahmed dead. The police was informed and, ultimately, Gulamhussain Chottebapu Ansari's complaint came to be registered. The offence was registered, investigation started and the investigating agency, after having found sufficient evidence against the accused persons, filed charge sheet in the Court of learned Judicial Magistrate, First Class, at Ankleshwar. As the case was triable by a Court of Sessions, the case was committed by the learned Judicial Magistrate, First Class, at to the Sessions Court, at Bharuch and Sessions Case No.67 of 1997 came to be registered.

3.2 Charges against all four accused persons were framed at Ex.7, for offence punishable under Section 302 of I.P.C. against accused No.1; 302 read with Section 114 or, in the alternative, 302 read with Section 34 of I.P.C. against accused Nos. 2, 3 and 4; and for offences punishable under Sections 504 and 506(2) read with Section 114 or, in the alternative, with Section 34 of I.P.C. against all the accused persons. The charge of offence punishable under Section 135 of the Bombay Police Act was also framed against accused Nos. 1 and 2. The accused persons pleaded not guilty to the charge and claimed to be tried. The Trial Court, after considering the evidence led by the prosecution, came to a conclusion that the prosecution could not establish any of the charges against original accused No.4-Bai Niru, wife of Thakorebhai Somabhai Prajapati and recorded acquittal in her favour.

3.3 All the accused persons were also acquitted of charges punishable under Section 504, 506(2) read with Section 114 of I.P.C. and Section 135 of the Bombay Police Act.

3.4 Accused No.1 came to be convicted for offence punishable under Section 302 and was sentenced to undergo imprisonment for life for that offence. He was also convicted for offences punishable under Sections 323, 324 read with Section 34 of I.P.C. and was sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.100/-, in default, to undergo further rigorous imprisonment for seven days. Accused No.1 came to be convicted for offence punishable under Section 324 read with Section 34 of I.P.C. and was ordered to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- and, in default, to undergo further rigorous imprisonment for fifteen days.

3.5 Accused No.2 came to be convicted for offence

punishable under Section 302 read with Section 34 of I.P.C. and was sentenced to undergo imprisonment for life. He was also convicted for offence punishable under Section 323 of I.P.C. and was ordered to undergo rigorous imprisonment for two months and to pay a fine of Rs.100/- and, in default, to undergo further rigorous imprisonment for seven days. Accused No.2 was also convicted for offence punishable under Section 324 of I.P.C. and was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/- and, in default, to undergo further rigorous imprisonment for fifteen days.

3.6 Accused No.3 was convicted for the offence punishable under Sections 302 read with Section 34 of I.P.C. and was sentenced to undergo imprisonment for life. He was convicted for offence punishable under Section 323 read with Section 34 of I.P.C. and was sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.100/and, in default, to undergo rigorous imprisonment for seven days. Accused No.3 was also convicted for offence punishable under Section 324 read with section 34 of I.P.C. and was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/and, in default, to undergo further rigorous imprisonment for fifteen days.

3.7 All the sentences were ordered to run concurrently.

4. Aggrieved by the said judgment and order, original accused Nos.1, 2 and 3 have preferred this appeal and they are addrssed to as accused Nos. 1, 2 and 3 in this judgment, for sake of convenience. It appears that the State has not preferred any appeal against the acquittal of original accused No.4-Niruben, wife of Thakorebhai Somabhai.

5. The appellants are represented by learned Advocate, Mr. J.M. Budhbhatti, appearing for Mr. Y.N. Oza and the State is represented by learned Additional Public Prosecutor, Mr. A.J. Desai. The record and proceedings of the case is before us.

6. Learned Advocate, Mr. Budhbhatti, has taken us through the entire record and proceedings, particularly, the depositions. Broadly speaking, according to Mr. Budhbhatti, the prosecution case suffers from a number of infirmities. Mr. Budhbhatti submitted that the infirmities are of such a nature which, if viewed collelctively, which would render the prosecution case

unbelievable. Mr. Budhbhatti submitted that, according to the prosecution case, witness-Kitabuddin had sustained injury in the back with an axe, but the F.I.R., if seen, is silent about any injury to Kitabuddin. The accused persons were not charged for causing injury to Kitabuddin nor have they been convicted therefor. But, if Kitabuddin had really sustained injuries, the prosecution ought to have brought some material to indicate these injuries. Mr. Budhbhatti submitted that the evidence of eye-witnesses, if read in comparison to the medical evidence, apparently would go contrary to each other. All the eye-witnesses state that one knife blow was given in the abdomen and another blow was given on the head by accused No.1 to deceased Sagir Ahmed. None of the eye-witnesses speak anything about any third injury. Contrary to this, Mr. Budhbhatti submitted that two injuries were found in the abdomen and one injury on the head is found. In all, there are three injuries on person of deceased Sagir Ahmed. The prosecution has not even attempted to explain the third injury. Mr. Budhbhatti submitted that it has come in evidence of Dr. Rashmikant C. Mehta (Ex.41) that injury on head of the deceased was not possible with muddamal knife, whereas it is the case of the witnesses that the injury was caused with that very muddamal knife. Mr. Budhbhatti, therefore, submitted that the evidence of the eye-witnesses does not inspire any confidence.

6.1 While taking us through the depositions of the witnesses, Mr. Budhbhatti submitted that the incident had occurred while the accused persons were required to exercise their right of private defence. Accused-Jagdish was assaulted upon by the deceased and the prosecution witnesses and the incident occurred while attempting to save him. Jagdish sustained injury on his head. This injury on head of accused-Jagdish has not been explained by the prosecution. The Investigating Officer has recorded the injury in Panchnama-Ex.34, but has not cared to record a complaint of the accused and, therefore, when the incidents have occurred in exercise of right of private defence, conviction could not have been recorded by the Trial Court, as has been done. Mr. Budhbhatti, therefore, submitted that the appeal may be allowed and the appellants be acquitted.

7. Learned Additional Public Prosecutor, Mr. Desai, submitted that the incident occurred on November 30, 1994, whereas the arrest was made on December 3, 1993. Accused-Jagdish is found to have some injury on his head at the time of the arrest. Barring this, there is no other material to indicate that the injury was sustained

by him in the incident. All the eye-witnesses have denied the suggestion of Jagdish having received injury in the incident. Mr. Desai submitted that, when the factum of injury to the accused in the incident itself is not established, there is no question of prosecution trying to explain the same. It could be a subsequent injury.

7.1 Mr. Desai submitted that the incident occurred just in front of the house of the victim. The incident occurred at about 9.00 P.M. The accused persons had no reason to be there at that point of time with weapons like knife and/or axe. Multiple injuries have been caused to the deceased and, therefore, the accused persons were the assailants. This has been established by independent reliable evidence and the Trial Court has, therefore, rightly recorded conviction and this Court may not interfere with the judgment and order.

7.2 Mr. Desai submitted that though factually it is true that the witnesses speak of only two blows, one in the abdomen and the other on the head, if the medical evidence is seen, the third injury which was found in abdomen is very near to the other injury in the abdomen. This is a very superficial injury and, therefore, may have been caused in course of inflicting the abdominal injury which proved to be fatal. As regards the medical evidence that injury on head of the person of the deceased was not possible with knife, Mr. Desai submitted that when other everwhelming evidence is there, such a mistake or discrepancy may not be given such a weightage to record an acquittal. Mr. Desai, therefore, submitted that the appeal may be dismissed.

8. We have considered the rival side contentions in light of the evidence on record. The case is established by the prosecution by examining three eye-witnesses, (1) Gulamhussain Chhotebapu (P.W.1-Ex.23), (2) Gyasuddin Ahmed Ansari (P.W.2-Ex.25) and (3) Kitabuddin Ansari (P.W.3-Ex.27).

8.1 Gulamhussain Chhotebapu (Ex.23) states that, he along with Kitabuddin, Gyasuddin, Sagir Ahmed and Gulamhussain was sitting on the Otta of his house at about 8.30 P.M. on the day of the incident. At that time, accused Jagdish, Thakore Prajapti and Balwant arrived there and started giving abuses to Sagir Ahmed in the name of his mother and sister. Sagir Ahmed requested them not to give abuses. At that time, accused No.1, who had a knife in his hand, inflicted a knife blow in the abdomen of Sagir Ahmed. He says that the second blow was

given by accused No.1 to Sagir Ahmed on left side of his head. He says that, thereafter, Sagir Ahmed fell down. Witness himself, Kitabuddin and Gyasuddin rushed to Sagir Ahmed for rescue. At that time, accused No.3-Balwant caught hold of Gyasuddin and accused No.2 gave a blow on head of Gyasuddin with an axe. Gyasuddin started bleeding from the head injury. They summoned an auto-rickshaw and took Sagir Ahmed to the hospital of Dr. Arvindbhai, who advised them to take Sagir Ahmed to Civil Hospital, Bharuch. The doctor at the Civil Hospital, Bharuch, informed that Sagir Ahmed had expired.

8.1.1 The witness has been cross-examined at length. He says that there was no dispute with the accused persons. He admits that there is a Police Outpost nearby the place of incident. He also admits that while going to Dr. Arvind Patel, one has to pass by the Police Outpost. He says that Dr. Patel inquired of him as to how the incident had occurred and he informed the doctor that Thakore and others had caused the injury. At that time, Sagir Ahmed was conscious. On a specific question as to whether he had any talk with Sagir Ahmed while taking Sagir Ahmed to the hospital, he says that he did not have any talk with him, but Sagir Ahmed was murmering "Thakore'ne mara, Thakore'ne mara". He says that he did not know as to when Sagir became unconscious, but he was unconscious when they reached the Civil Hospital, Bharuch. He says that when the first blow was given to Sagir Ahmed, he was in a standing position. He fell down after receiving the second blow. He says that Gyasuddin had sustained injury and was bleeding therefrom, but his clothes did not have any blood stains because he had covered the wound with his handkerchief. On a specific question as to whether he had noticed any injury to accused-Jagdish, he in terms stated that he had not seen such an injury.

8.1.2 The defence theory of a quarrel started by the victim's side and injury caused to Jagdish in the transaction has been put to this witness, which he has denied firmly. He denies that he and others were standing in the street in a manner to obstruct the passage and, therefore, Jagdish asked them to stand on one side. He denies the suggestion that the witness and others said to Jagdish that they want to beat him. He also denies the suggestion that all of them gheraoed him and assaulted him with sticks and Tabbal. He denies the suggestion that Jagdish started raising cries and sustained injury on his head. He also denies the suggestion that maternal aunt of Jagdish, who happens to be the mother of accused No.3, intervened and covered up

Jagdish by sleeping over him. He also denies the suggestion that she was caught by hair and dragged away.

8.2 Gyasuddin Ansari is examined at Ex.25. In the examination-in-chief, he says that, while they were sitting outside on the Otta on November 30,1993, at about 9.00 P.M., accused Jagdish, Thakore and Balwant came and started giving abuses to Sagir Ahmed. Sagir Ahmed asked them not to do so and, therefore, Thakore Prajapati inflicted a knife blow in the abdomen of Sagir Ahmed. He says that, thereafter, Thakore Prajapati inflicted another blow on the left side of the head of Sagir Ahmed, as a result of which, Sagir Ahmed fell down. Therefore, he rushed for his rescue along with Kitabuddin and Gulamhussain. At that time, the witness says that, he was caught hold by accused-Balwant and accused-Jagdish inflicted a blow on his head with hind portion of an axe. His head was broken and he started bleeding therefrom. The witness says that, around that time, wife of accused No.1-Thakore came and said "Miyan Ko Maro". He says that, at that time, a person of Vaghari community selling garlic also came there. He caught hold of Kitabuddin and Jagdish inflicted a blow on the left side in the back of Kitabuddin with the hind portion of the axe. Thereafter, they intimidated all of them and went away. Thereafter, they took Sagir Ahmed to Hospital and on way, Sagir Ahmed was murmering "Thakore'e Chappu Maryo, Thakore'e Chappu Maryo". He says that Dr. Patel advised them to take Sagir Ahmed to Civil Hospital, Bharuch. They, therefore, took him to Civil Hospital, Bharuch, where he was declared dead. This witness has also been cross-examined. He says that they noticed the accused persons coming when they were about 5 to 6 feet away. He says that they were sitting on the Otta. The abusing continued for about five minutes. He denies the specific suggestion that they were blocking the passage and, therefore, abuses were given to them. He says that he did not make any attempt to rescue Sagir Ahmed Ansari. He says that blood had fallen on the floor where blow was given to Sagir Ahmed Ansari. It was specifically asked whether the injury on head of Sagir Ahmed with knife was caused while he was standing or after he fell down and the answer that the witness gave was that it was after the deceased fell down. He has been cross-examined further when he says that Kitabuddin sustained injuries after he sustained injuries. This witness also was asked whether he had seen any injury on head of accused Jagdish, to which he says no. On being asked, as to whether he had any talk with doctor at Bharuch, he says that the doctor asked as to what had happened and he replied that Thakore had given knife blow. To this

witness also, the defence theory of sitting in the street blocking the passage and, on being asked to move aside, quarrel taking place, assaulting accused-Jagdish and causing injuries to him is put, which has been categorically denied.

8.3 The third injured eye-witness-Kitabuddin Ansari is examined at Ex.27. He also states that, while they were sitting on the Otta, the accused persons came and started abusing Sagir Ahmed. He states that Thakore Prajapati inflicted a knife blow in the abdomen and second blow on the head of Sagir Ahmed. Sagir Ahmed fell down. Therefore, he and witnesses-Gyasuddin and Gulamhussain tried to intervene and rescued Sagir Ahmed. Accused-Balwant caught hold of Gyasuddin and accused-Jagdish gave a blow with an axe on head of Gyasuddin. Gyasuddin started bleeding. Because of the hubub, a Vaghari, who sells garlic, came and he caught hold of this witness (Kitabuddin) and accused-Jagdish inflicted a blow on the back of the witness. Thereafter, Sagir Ahmed was taken to hospital. This witness has also been cross-examined. He says that, after the auto-rickshaw carrying Sagir Ahmed left, he went to the Police Station and informed Police about the incident. The police immediately sent him to hospital. Yadi was not given to him but a policeman accompanied him. He says that, after treatment, he went back to the Police Station and he was in the Police Station upto 12 midnight. Thereafter, he went home. During cross-examination, he further states that there was no altercation before injury of Sagir Ahmed was caused. He says that, first Gyasuddin sustained injury and, thereafter, he sustained injury. He states that, there was blood on the Otta. This witness also states that he did not see any injury on person of accused-Jagdish. He denies the suggestion that when Jagdish was passing by their house, they were sitting obstructing the passage. He also denies that when Jagdish asked them to clear the passage, they (the complainant's side) attacked them (Jagdish and others). He denies the suggestion that the maternal aunt of Jagdish came and she was dragged by the complainant's side.

8.4 Witness-Anjumara Karimulla Ansari (Ex.28) is a witness who reached the spot soon after the incident and had no personal knowledge about how the incident occurred.

8.5 Dr. Rashmikant Chimanlal Mehta is examined at Ex.41. He had performed postmortem of Sagir Ahmed Ansari. He states that Sagir Ahmed had sustained three

external injuries. Injury No.1 was on the parietal region of the head; injury No.2 was in the abdominal portion, which was of the size of 4 x 1.5 cm. x cavity deep and the third injury was also in the abdominal portion about 4 x 1.8 cm. which was muscle deep. According to the doctor, injury No.2 was sufficient in the ordinary course of nature to cause death. He states that, according to him, the death occurred because of injury to liver and consequent haemorrhage/bleeding. He says that injury No.2 is possible with muddamal knife, but head injury is not possible with it. During cross-examination, he says that all the three injuries were independent of each other.

8.5.1 The postmortem notes are at Ex.42, wherein the doctor has opined that cause of death is shock due to intra-abdominal haemorrhage following injury to liver. Injuries described in column 17 and column 21 indicate that there were corresponding injuries to external injury No.2.

8.6 The Investigating Officer-Babubhai K. Gameti is examined at Ex.46. He deposes that accused-Thakore Soma Prajapati appeared before him on December 3, 1993 with blood stained clothes. The clothes were seized vide Panchnama, Ex.33. He discovered the muddamal weapon. A Panchnama in that regard was drawn at Ex.37. Accused-Jagdish and Balwant Babu also appeared before him and a Panchnama was drawn at Ex.34. Jagdish Nanji discovered the axe and a Panchnama (Ex.38) was prepared. During cross-examination, he admits that injury on head of accused-Jagdish was noticed and was mentioned in Ex.34. It is revealed from the cross-examination that no complaint from accused-Jagdish was received by him.

9. If an overall view of the evidence, as discussed above, is considered in light of the arguments made before us, it no more remains a matter of dispute that deceased-Sagir Ahmed died an unnatural death. It also cannot be disputed that he died because of injury sustained by him in the incident. It is nobody's case that the injuries were self-inflicted and, therefore, the death is neither suicidel nor accidental nor natural. On the contrary, defenc has come out with a theory of exercise of right of private defence which would leave little scope to contend non-involvement of accused in the incident.

10. Attempt was made to assail the prosecution case and render it unbelievable by saying that the version given by the witnesses is inconsistent and should not

inspire confidence of the Court. To assail the deposition of Gulamhussain Ansari, it was contended that he states about one injury on abdomen and one injury on head of deceased-Sagir Ahmed, whereas three injuries are found and the third injury, which is found, was in abdomen. It has to be borne in mind that soon after the incident, deceased was taken to the hospital and the injuries as noticed in the postmortem notes by the doctor were found. It has to be also noticed that the incident has occurred at about 9.00 P.M. The incident occurred abruptly and it is quite possible that the witnesses may not have noticed external injury No.3 noticed by the doctor, i.e. the injury in abdomen other than the fatal injury. Simply because the witnesses are not able to account for each and every injury caused to the deceased, their depositions cannot be thrown off the board. It depends on observation power of each individual when an incident occurs suddenly. It also depends on capacity of an individual to recall and describe the incident and, therefore, in our opinion, this contention cannot be accepted to disbelieve the deposition of Gulamhussain Ansari.

10.1 The second contention that is raised to assail the deposition of the witnesses is that the injury found on head of Sagir Ahmed was not possible to be caused by muddamal article-knife, as per the medical evidence, when according to the eye-witnesses, that injury was also caused with knife by accused Thakore Soma Prajapati. It is true that there is discrepancy in the prosecution evidence, but the discrepancy relates to the non-fatal injury and when there is overwhelming evidence of eye-witnesses in rspect of the fatal injury and other injuries, this discrepancy pales out to insignificance.

10.2 Another contention that was raised to assail the prosecution evidence was that Kitabuddin claims to have sustained injury. The other witnesses also say that injury was caused to Kitabuddin, but no charge is framed in that regard. May be that is true, but the consistent evidence of the witnesses coupled with evidence of Dr. Surendrakumar Gosai (Ex.39), who had given treatment to Kitabuddin. There is no reason to disbelieve this version. It is to be remembered that besides Kitabuddin, Gyasuddin was also injured in the incident by the accused. In any event, attempt on part of the defence to raise doubt about the veracity of the prosecution case on this count fails miserably. The defect in the charge, viz. regarding injury to Kitabuddin and consideration of evidence in that regard cannot be said to have caused any prejudice to the interest of accused persons when

evidence regarding injury to Gyasuddin is established against them.

11. The queston remains whether death of Sagir Ahmed can be labelled as a murder or culpable homicide not amounting to murder. Learned Advocate, Mr. Budhbhatti, has also concentrated on this limited aspect of defence. According to him, quarrel was started by the prosecution witnesses. Accused Jagdish was assaulted upon and, therefore, in exercise of right of private defence, the injury was caused. Mr. Budhbhatti has also raised the contention that injury to Jagdish was not explained by the prosecution.

11.1 The defence has brought on record during cross-examination, that maternal aunt of Jagdish had come to the spot at the time of the incident. The defence could have very well examined her as a defence witness to support its case about the complainant party initiating the quarrel and assailing the accused party.

12. At the outset, it has to be stated that injury to accused-Jagdish was not noticed by any of the witnesses as it emerges from the evidence. Jagdish appeared before the police after three days. No complaint is lodged by him and barring his case in his statement under Section 313 of the Code of Criminal Procedure, no material is brought on record by the defence even to infer that Jagdish had sustained injury in the incident. In his further statement, he has stated at the end that while he was passing on the road, others were standing blocking the road. He, therefore, asked them to keep the passage open. Therefore, they gheraoed him, abused him and caused injury on his forehead.

12.1 Barring this bald statement in his statement under Section 313 of the Code, the defence has not brought on record slightest material to support this defence. Suggestions put to witnesses have been firmly denied by them. Nothing is brought on record to indicate that Jagdish had taken any treatment from any doctor. It is also interesting to note that except accused-Jagdish, no other accused, namely, Thakore Soma Prajapati, Balwant Babu Patel or Niruben, state in their statements under Section 313 that the incident occurred in the manner described by Jagdish. According to Thakore Soma Prajapati, he is falsely implicated in the incident at the instance of the complainant, Aziz Mabkapuri and Maksud Hansoti. According to other accused, they have been falsely implicated. They do not say anythig to

support the case of accused-Jagdish about the complainant and others blocking the road and on request being made by Jagdish to clear the passage, they gheraoed him and attacked him. It is, therefore, difficult to accept this version of the defence as against a specific evidence led by the prosecution in form of eye-witnesses Gulamhussain Ansari (Ex.23), Gyasuddin Ansari (Ex.25) and Kitabuddin Ansari (Ex.27), all of whom have consistently stated in their depositions that the accused persons came there and started abusing Sagir Ahmed and, on being asked not to do so, accused No.1 inflicted knife blows on Sagir Ahmed. Accused-Jagidsh inflicted axe blows on Gyasuddin and Kitabuddin, wherein Balwant actively helped in commission of the crime by holding Gyasuddin. The witnesses have held fast to their version even during cross-examination and nothing emerges from cross-examination of any of the witnesses, as can be seen from the evidence discussed above.

13. We have also gone through the judgment and order impugned herein and, in our opinion, the learned Judge has taken care to discuss all the relevant evidence and contentions raised before him. We do no find any error to have been committed by the learned Judge in recording conviction. The appeal, therefore, must fail.

14. The appeal is dismissed. The judgment and order impugned herein are confirmed. Appellant No.3-Balwant Babhabhai Patel, who is on bail, shall surrender to the custody forthwith.

15. At this stage, Mr. Budhbhatti prays for time to surrender. Hence, two weeks' time is granted to appellant No.3-Balwant Babhabhai Patel to surrender.

[A. L. DAVE, J.]

[SHARAD D. DAVE, J.]

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